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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 FABIAN ZANZI, an individual;

15 Plaintiff,

16 vs.

17 JOHN TRAVOLTA, an individual;

18 Defendants.

) Case No.: CV12-5393 SVW (AJWx)

) [Honorable Stephen V. Wilson, Courtroom 6]

) PLAINTIFF FABIAN ZANZI'S
) OPPOSITION TO DEFENDANT'S MOTION
) FOR UNDERTAKING; DECLARATION OF
) FABIAN ZANZI

) Date: January 28, 2013

) Time: 1:30 p.m.

) Courtroom: 6

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1 I. INTRODUCTION

2 Plaintiff's claims are not "frivolous" and "attorney-driven" as John Travolta
3 ("Travolta") portrays. Plaintiff's claims that Travolta was a sexual predator that victimized
4 him have absolute merit. Plaintiff reported Travolta's inappropriate conduct to Royal
5 Caribbean Cruises, LTD ("RCCL") through, among others, supervisor Rodolfo Castillo.
6 (Declaration of Fabian Zanzi, Exhibit 1). Rodolfo Castillo, a percipient witness,
7 corroborates Plaintiff's reporting of Travolta's sexual assault and the scheme undertaken
8 by RCCL to conceal the events relating to this claim. (Declaration of Fabian Zanzi, Exhibit
9 1).

10 Plaintiff, Fabian Zanzi ("Plaintiff"), is a financially poor litigant without the means to
11 cover the security for costs that Travolta is demanding for this Court to order. By his
12 Declaration, Plaintiff respectfully requests this Court to exempt him from the mandates of
13 California Code of Civil Procedure, Section 1030, on the basis that he is a financially poor
14 litigant who will be deprived of his ability to seek redress for Travolta's actions.

15
16 II. ARGUMENTS

17 a. PLAINTIFF'S CASE HAS ABSOLUTE MERIT.

18 Travolta sexually assaulted Plaintiff. (Declaration of Fabian Zanzi, ¶5-7; Exhibit 1).
19 There is substantial evidence of this fact. (Declaration of Fabian Zanzi, ¶2-8; Exhibit 1).
20 The truth of the matter is that Travolta forced his naked body and erect genitals on
21 Plaintiff's body. (Declaration of Fabian Zanzi, ¶5). Not being satisfied in doing so,
22 Travolta further solicited for Plaintiff to take care of him in a sexual manner. (Declaration
23 of Fabian Zanzi, ¶6). When Plaintiff declined Travolta's invitation and sexual advances,
24 Travolta sought to bribe Plaintiff in order to "cover" his tracks. (Declaration of Fabian
25 Zanzi, ¶8).

26 Travolta is continuing with his "cover up" efforts. With the aid of employees and
27 representatives of Royal Caribbean Cruise Lines, LTD. ("RCCL"), Travolta seeks to
28 conceal these revolting actions.

Travolta takes the meritless position that Plaintiff's claims are frivolous because of the statements of RCCL employees claiming that Plaintiff did not report the Travolta sexual assault incident. Plaintiff has maintained that he told RCCL of Travolta's sexual assault. (Declaration of Fabian Zanzi, ¶9-11). It is RCCL and its employees that prevented Plaintiff from documenting Travolta's sexual assault. (Declaration of Fabian Zanzi, ¶10-11).

Rodolfo Castillo, an employee of RCCL, who was present with Plaintiff at the time of the reporting of the incident in question has provided the following statements in support of Plaintiff's claims:

- Rodolfo Castillo was an assistant food manager who Plaintiff approached immediately after the incident with Travolta.
- Rodolfo Castillo accompanied Plaintiff to management so that Plaintiff could report Travolta's actions;
- Plaintiff told Rodolfo Castillo about Travolta's sexual assault;
- Plaintiff was detained on a "fake" medical issue in a cabin.

(Fabian Zanzi Declaration, Exhibit 1- Statement of Rodolfo Castillo).

As such, Travolta's claim that Plaintiff's case has no shred of legitimacy is without merit.

**b. THIS COURT HAS AUTHORITY TO DISPENSE OF THE
SECURITY FOR COSTS REQUESTED BY DEFENDANT.**

CCP § 1030, providing that when the plaintiff in an action resides out of the state, security for costs and charges which may be awarded against such plaintiff may be required by the defendant, does not clearly and manifestly express an intent to, nor does it deprive the courts of their common law power to waive fee and security for costs of an indigent litigation, and under the doctrine of in forma pauperis, the court retains this inherent power. *Bank of America Nat'l Trust & Sav. Asso. v. Superior Court of Fresno County* (1967, 5th Dist) 255 Cal App 2d 575.

A number of American decisions permit the maintenance of poor persons' litigation

1 notwithstanding their inability to comply with cost security statutes. *County of Sutter v.*
 2 *Superior Court of Sutter County*, 244 Cal. App. 2d 770, 774 (Cal. App. 3d Dist. 1966)
 3 ["the California in forma pauperis power covers security for costs"]; See cases collected in
 4 6 A.L.R. at pp. 1285, 1288, 1291). Although the language of Cal Code Civ Proc § 1030 (c)
 5 is mandatory, the court has the common law authority to dispense with the undertaking if
 6 the plaintiff is indigent. See e.g., *Conover v. Hall*, 11 Cal.3d 842, (1974). In forma
 7 pauperis status clearly justifies waiver of "public costs" and then extends in forma pauperis
 8 rights to embrace waiver of required undertakings such as appeal bonds and bonds
 9 ordinarily required from out-of-state plaintiffs. *Tracy A. v. Superior Court*, 117 Cal. App.
 10 4th 1309, 1320 (Cal. App. 2d Dist. 2004) citing *Roberts v. Superior Court* (1968) 264 Cal.
 11 App. 2d 235, 240; *Bank of America v. Superior Court* (1967) 255 Cal. App. 2d 575.

12 28 U.S.C.S. § 1915, subd. (a) now permits federal courts to waive cost security from an
 13 indigent litigant. In addition, prestatutory decisions in federal admiralty cases customarily
 14 permitted suspension of rules requiring security for costs. *Lowndes v. The Phoenix*, 36 F.
 15 272, cited in 6 Cal.L.Rev. at p. 227. Affidavits addressing statutory language should be
 16 accepted by court, absent serious misrepresentation, and need not show that litigant is
 17 "absolutely destitute" to qualify for indigent status under 28 USCS § 1915, and such
 18 affidavit will be held sufficient if it represents that litigant, because of litigant's poverty, is
 19 unable to pay for court fees and costs, and to support and provide necessities for litigant
 20 and litigant's dependents. In other words, § 1915 is not to be construed such that potential
 21 litigants are forced to become public charges or abandon their claims because of filing fee
 22 requirements. *Martinez v Kristi Kleaners, Inc.* (2004, CA11 Fla) 364 F3d 1305.

23 Plaintiff is a poor litigant. (Declaration of Fabian Zanzi, ¶12). Plaintiff has been
 24 unemployed since October of 2012. (Declaration of Fabian Zanzi, ¶12). He relies on the
 25 grace of his parents for living expenses, food and shelter. (Declaration of Fabian Zanzi,
 26 ¶12). He has two properties in Chile that are in foreclosure as Plaintiff has not been able to
 27 pay the loans that encumber such properties since November of 2011. (Declaration of
 28 Fabian Zanzi, ¶12). The money that his parents are providing him is not sufficient to pay

1 his debts related to the properties that he owns in Chile. The humble \$200.00 U.S. Dollars
2 that he derives from his parents on a monthly basis is barely sufficient to cover his own
3 day-to-day living expenses.

4 *Bank of America, supra*, is instructive in this case as to the issue at hand against a non-
5 resident Plaintiff. *Bank of America* involved a question as to whether or not the real parties
6 in interest were legally correct in their demand that nonresident litigants should file
7 security for costs pursuant to section 1030 of the Code of Civil Procedure. One A. D.
8 Willburn filed an action in the Fresno County Superior Court against petitioners and others
9 seeking damages. On July 25, 1966 petitioners filed a demand for security for costs, and,
10 thereafter, on November 17, 1966, Wilburn was adjudicated a bankrupt. The trustee in
11 bankruptcy authorized local counsel to proceed with the action and suggested to counsel by
12 letter that perhaps Willburn, individually, might post security for costs and proceed with
13 the action as there were no funds in the bankruptcy estate. Thereafter, Willburn filed a
14 declaration stating that he had been adjudged a bankrupt and had no money with which to
15 pay fees or court costs. The trial Court ordered Willburn exempt from depositing a security
16 for costs. The Court of Appeal of California for the Fifth District agreed with the Trial
17 Court citing *Sutter (supra)*. *Bank of America v. Superior Court* (1967) 255 Cal. App. 2d
18 575.

19 As such, Plaintiff respectfully requests this Court to exercise its discretion parallel to
20 the Court's decision in *Bank of America*. Both cases involved a request for a costs security
21 bond pursuant to California Code of Civil Procedure Section 1030. Both cases involved
22 poor litigants who, by competent declarations, have shown the inability to post the
23 requested security. The Plaintiffs in both cases do not have the means to post the security
24 bond that is being demanded against them and Plaintiff Fabian Zanzi would be deprived of
25 his ability to access the Court system and pursue his claims if California Code of Civil
26 Procedure Section 1030 was upheld against him.

1 III. CONCLUSION

2 Plaintiff respectfully requests this Court to deny Defendant's Motion for an
3 undertaking pursuant to California Code of Civil Procedure Section 1030.

4
5 Date: 1/4/2013

Golden & Timbol, PC.

6
7 /s/ Servando Timbol

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